

UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT

**SUMMARY ORDER**

**THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.**

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 6th day of September, two thousand and six.

Present: HON. ROSEMARY S. POOLER,  
HON. RICHARD C. WESLEY,  
HON. PAUL R. MICHEL<sup>1</sup>,  
*Circuit Judges.*

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UNITED STATES OF AMERICA,

*Appellee,*

- v -

(04-5481-cr)

RAMON REYES,

*Defendant-Appellant.*

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Appearing for Appellant:

Susan V. Tipograph, New York, NY.

Appearing for Defendant-Appellee:

Christine Meding, Assistant United States Attorney  
(Michael J. Garcia, United States Attorney,  
Southern District of New York, Katherine Polk  
Failla, Assistant United States Attorney), New  
York, NY.

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Appeal from the United States District Court for the Southern District of New York  
(Lynch, J.).

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<sup>1</sup>Hon. Paul R. Michel, Chief Judge of the United States Court of Appeals for the Federal Circuit, sitting by designation.

1           **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**  
2           **DECREED** that the judgment of the district court be **AFFIRMED**.

3           Defendant-Appellant Ramon Reyes appeals from a judgment of conviction entered on  
4           October 12, 2004, in the district court following a two-phase jury trial. During the first phase,  
5           Reyes was found guilty of distributing and possessing with intent to distribute heroin, in violation  
6           of 21 U.S.C. § 841, and of possessing a firearm in furtherance of a drug trafficking crime, in  
7           violation of 18 U.S.C. § 924(c)(1)(A)(1). During the second phase of the trial, Reyes was found  
8           guilty of possessing a firearm after having been convicted of a felony, in violation of 18 U.S.C.  
9           § 922(g)(1). Reyes was sentenced to a total of 117 months' imprisonment to run concurrently  
10          with the undischarged portion of a New York State sentence that Reyes was required to serve for  
11          a previous felony conviction. We assume the parties' familiarity with the facts of this case, its  
12          relevant procedural history, and the issues on appeal.

13          On appeal, Reyes challenges only his conviction for possessing a firearm after having  
14          been convicted of a felony. In particular, Reyes contends that the district court erred in failing to  
15          instruct the jury that the government was required to prove, beyond a reasonable doubt, that  
16          Reyes knew that he was a convicted felon at the time he possessed the firearm on October 17,  
17          2001. Reyes claims that on that date, he did not know of his felon status because he was unaware  
18          that the New York State Appellate Division, First Department, had reinstated his felony  
19          conviction, which had earlier been vacated by the New York Supreme Court. *See People v.*  
20          *Reyes*, 255 A.D.2d 261 (1st Dep't 1998).<sup>2</sup> In support of his claim that the jury charge was  
21          erroneous, Reyes relies principally upon the dissenting opinion in *United States v. Langley*, 62

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<sup>2</sup>On January 22, 1999, the New York Court of Appeals denied Reyes's application for leave to appeal the Appellate Division's judgment reinstating the conviction. *People v. Reyes*, 92 N.Y.2d 1053 (1999).

1 F.3d 602 (4th Cir. 1995) (en banc), which rejected the *Langley* majority’s view that the general  
2 knowledge *mens rea* requirement applicable to 18 U.S.C. § 922(g)(1) does not extend to the  
3 felon status element of the felon-in-possession offense.

4 We acknowledge that the dissent in *Langley* has some persuasive force. *See Langley*, 62  
5 F.3d at 613-19 (Phillips, J., concurring in part and dissenting in part). The government did,  
6 however, offer proof at trial of Reyes’s knowledge of the reinstatement of his conviction. In  
7 particular, the government submitted certified copies of correspondence addressed to Reyes, his  
8 attorney,<sup>3</sup> and the New York County District Attorney’s Office, informing those parties of the  
9 reinstatement of Reyes’s conviction and sentence. The letter addressed to Reyes stated  
10 unequivocally that “the judgment rendered against you in the above entitled action is reinstated.”  
11 Supp. App. at 48. The letter further ordered Reyes to surrender himself on December 21, 1998,  
12 to serve the remainder of his sentence and warned him that a bench warrant for his arrest could  
13 be issued in the event that he failed to appear. This letter was sent to Reyes’s last known address.

14 Significantly, Reyes never submitted any evidence supporting his claim that he did not  
15 know of the reinstatement of his conviction. Even though the district court indicated it would  
16 allow Reyes to offer proof that he did not receive notice of the reinstatement of his conviction,  
17 Reyes never contested his receipt of the notice of reinstatement. In fact, he never even claimed  
18 that the address to which the notice of reinstatement was sent was not his current address at the  
19 time. Indeed, Reyes did nothing more than make the claim, through his attorney and in the jury’s  
20 absence, that “he never became aware that his conviction was reinstated and that it was his belief  
21 at the time he was arrested on the [felon-in-possession] charge in October of 2001 that he . . . had

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<sup>3</sup>In an order dated November 13, 1997, the New York State Appellate Division, First Department, upon Reyes’s own motion, appointed counsel to represent Reyes in the People’s appeal. Order Granting Mot. for Assignment of Counsel, Nov. 13, 1997.

1 not been convicted of a prior felony.”<sup>4</sup>

2 In light of all of the evidence, and considering the complete absence of evidence in  
3 support of Reyes’s claim that he did not know of the reinstatement of his felony conviction at the  
4 time of his arrest, it appears beyond a reasonable doubt that, even if the district court’s failure to  
5 charge knowledge of felony status was erroneous, that error “did not contribute to the verdict  
6 obtained” and therefore was harmless. *Neder v. United States*, 527 U.S. 1, 15 (1999) (quoting  
7 *Chapman v. California*, 386 U.S. 18, 24 (1967)). Accordingly, we do not find it necessary to  
8 rule on the issue of whether the felon-in-possession statute requires the government to prove the  
9 defendant’s knowledge of his felon status.

10 For the reasons set forth above, the judgment of the district court is hereby Affirmed.

11  
12 For the Court

13 Roseann B. MacKechnie, Clerk  
14 \_\_\_\_\_

15 By:

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<sup>4</sup>During the first phase of the trial pertaining to the drug charges Reyes did testify. Most of his testimony focused on his claim that the informant set him up. Although he briefly discussed his N.Y. C.P.L. 440 motion and the circumstances surrounding his release from prison, he never discussed his claim that he did not know of the reinstatement of his felony conviction at the time of his arrest.